

APPEAL NO. 041454  
FILED AUGUST 9, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 22, 2004, with the record closing on May 18, 2004. The hearing officer determined that the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO).

The appellant (carrier) appealed, contending that the hearing officer erred in finding the IRO decision was not supported by the preponderance of the evidence and that the hearing officer applied the wrong legal standard to the presumption accorded to the IRO decision. The file does not contain a response from the respondent (claimant).

DECISION

Affirmed.

In unappealed findings the hearing officer determined that the claimant sustained a compensable spinal injury on \_\_\_\_\_. The claimant's treating doctor is Dr. S. No report from Dr. S is in evidence but apparently after testing and failed conservative treatment Dr. S recommended spinal surgery. An IRO decision dated March 30, 2004 (part of Hearing Officer's Exhibit No. 2 A) agreed with the carrier's decision to deny the proposed surgery. Dr. S disagreed with the decision and a CCH was scheduled for April 22, 2004. In unappealed findings the hearing officer determined (after sending a 10 day "show cause" letter) that the carrier and Dr. S knew about the scheduled CCH and did not have good cause for failing to appear.

In evidence was a "Second Opinion Examination" by Dr. RB. That report, dated March 5, 2004, after reviewing various diagnostic tests and treatment concluded that, "the patient has failed conservative treatment including chiropractic care, modalities, exercises, and epidural nerve blocks. I think it reasonable to proceed with surgical treatment that would include spinal stabilization." The hearing officer accepted that report and found the IRO decision was not supported by a preponderance of the evidence.

The carrier contends that the hearing officer "erred in placing any weight on the opinion of [Dr. RB]." The carrier also references the report of a designated doctor that is not in evidence. The carrier commented that the hearing officer "refused to list the exhibits offered into evidence." First we note that the hearing officer is the sole judge of the weight and credibility of the evidence, including medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). Further pursuant to the Texas Workers' Compensation Commission Practices and Procedures for CCH's beginning April 1, 2004, hearing officers no longer

list the parties' exhibits in their decision and orders. The hearing officer did not err and her decision is supported by sufficient evidence.

The carrier also contends that Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002, was incorrectly decided and that the IRO decision should be accorded the same presumptive weight that a designated doctors opinion has regarding maximum medical improvement and impairment rating. We explained our reasoning in Appeal No. 021958-s, *supra*, and decline to change our position at this time.

The hearing officer's determinations are not incorrect as a matter of law and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge